

§ 263.84

12 CFR Ch. II (1–1–10 Edition)

(4) The institution's plan for attaining the required level of capital.

(d) *Failure to file response.* Failure by the bank or bank holding company to file a written response to the notice of intent to issue a directive within the specified time period shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of such directive.

(e) *Board consideration of response.* After considering the response of the bank or bank holding company, the Board may:

(1) Issue the directive as originally proposed or in modified form;

(2) Determine not to issue a directive and so notify the bank or bank holding company; or

(3) Seek additional information or clarification of the response by the bank or bank holding company.

(f) *Contents of directive.* Any directive issued by the Board may order the bank or bank holding company to:

(1) Achieve or maintain the minimum capital requirement established pursuant to the Board's Capital Adequacy Guidelines or the procedures in § 263.85 of this subpart by a certain date;

(2) Adhere to a previously submitted plan or submit for approval and adhere to a plan for achieving the minimum capital requirement by a certain date;

(3) Take other specific action as the Board directs to achieve the minimum capital levels, including requiring a reduction of assets or asset growth or restriction on the payment of dividends; or

(4) Take any combination of the above actions.

(g) *Request for reconsideration of directive.* Any state member bank or bank holding company, upon a change in circumstances, may request the Board to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the required minimum capital level. The directive and plan continue in effect while such request is pending before the Board.

§ 263.84 Enforcement of directive.

(a) *Judicial and administrative remedies.* (1) Whenever a bank or bank holding company fails to follow a di-

rective issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the appropriate United State district court, pursuant to section 908 (b)(2)(B)(ii) of ILA (12 U.S.C. 3907(b)(2)(B)(ii)) and to section 8(i) of the FDIA (12 U.S.C. 1818(i)), in the same manner and to the same extent as if the directive were a final cease-and-desist order.

(2) The Board, pursuant to section 910(d) of ILA (12 U.S.C. 3909(d)), may also assess civil money penalties for violation of the directive against any bank or bank holding company and any institution-affiliated party of the bank or bank holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order.

(b) *Other enforcement actions.* A directive may be issued separately, in conjunction with, or in addition to any other enforcement actions available to the Board, including issuance of cease-and-desist orders, the approval or denial of applications or notices, or any other actions authorized by law.

(c) *Consideration in application proceedings.* In acting upon any application or notice submitted to the Board pursuant to any statute administered by the Board, the Board may consider the progress of a state member bank or bank holding company or any subsidiary thereof in adhering to any directive or capital adequacy plan required by the Board pursuant to this subpart, or by any other appropriate banking supervisory agency pursuant to ILA. The Board shall consider whether approval or a notice of intent not to disapprove would divert earnings, diminish capital, or otherwise impede the bank or bank holding company in achieving its required minimum capital level or complying with its capital adequacy plan.

§ 263.85 Establishment of increased capital level for specific institutions.

(a) *Establishment of capital levels for specific institutions.* The Board may establish a capital level higher than the

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minimum specified in the Board's Capital Adequacy Guidelines for a specific bank or bank holding company pursuant to:

(1) A written agreement or memorandum of understanding between the Board or the appropriate Federal Reserve Bank and the bank or bank holding company;

(2) A temporary or final cease-and-desist order issued pursuant to section 8(b) or (c) of the FDIA (12 U.S.C. 1818(b) or (c));

(3) A condition for approval of an application or issuance of a notice of intent not to disapprove a proposal;

(4) Or other similar means; or

(5) The procedures set forth in paragraph (b) of this section.

(b) *Procedure to establish higher capital requirement*—(1) *Notice*. When the Board determines that capital levels above those in the Board's Capital Adequacy Guidelines may be necessary and appropriate for a particular bank or bank holding company under the circumstances, the Board shall give the bank or bank holding company notice of the proposed higher capital requirement and shall permit the bank or bank holding company an opportunity to comment upon the proposed capital level, whether it should be required and, if so, under what time schedule. The notice shall contain the Board's reasons for proposing a higher level of capital.

(2) *Response*. The bank or bank holding company shall be allowed at least 14 days to respond, unless the Board determines that a shorter period is necessary because of the financial condition of the bank or bank holding company. Failure by the bank or bank holding company to file a written response to the notice within the time set by the Board shall constitute a waiver of the opportunity to respond and shall constitute consent to issuance of a directive containing the required minimum capital level.

(3) *Board decision*. After considering the response of the institution, the Board may issue a written directive to the bank or bank holding company setting an appropriate capital level and the date on which this capital level will become effective. The Board may require the bank or bank holding com-

pany to submit and adhere to a plan for achieving such higher capital level as the Board may set.

(4) *Enforcement of higher capital level*. The Board may enforce the capital level established pursuant to the procedures described in this section and any plan submitted to achieve that capital level through the procedures set forth in § 263.84 of this subpart.

Subpart F—Practice Before the Board

§ 263.90 Scope.

This subpart prescribes rules relating to general practice before the Board on one's own behalf or in a representational capacity, including the circumstances under which disciplinary sanctions—censure, suspension, or debarment—may be imposed upon persons appearing in a representational capacity, including attorneys and accountants, but not including employees of the Board. These disciplinary sanctions, which continue in effect beyond the duration of a specific proceeding, supplement the provisions of § 263.6(b) of subpart A, which address control of a specific proceeding.

§ 263.91 Censure, suspension or debarment.

The Board may censure an individual or suspend or debar such individual from practice before the Board if he or she engages, or has engaged, in conduct warranting sanctions as set forth in § 263.94; refuses to comply with the rules and regulations in this part; or with intent to defraud in any manner, willfully and knowingly deceives, misleads, or threatens any client or prospective client. The suspension or debarment of an individual shall be initiated only upon a finding by the Board that the conduct that forms the basis for the disciplinary action is egregious.

§ 263.92 Definitions.

(a) As used in this subpart, the following terms shall have the meaning given in this section unless the context otherwise requires.

(b)(1) *Practice before the Board* includes any matters connected with presentations to the Board or to any of its officers or employees relating to a